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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Gilles Rubinstenn

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08/08/2005

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EXAMINER

NGUYEN, KIMBINH T

ART UNIT

PAPER NUMBER

2671

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/024,480	RUBINSTENN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kimbhinh T. Nguyen	2671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-113 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-113 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is responsive to amendment filed 05/25/05.
2. Claims 1-113 are pending in the application.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 41, 42, 83, 85 and 96 are rejected under 35 U.S.C. 101 because the language of the claims raise a question as to whether the claims is directed merely to an abstract idea that is not tied to a technological art which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. The claims as not producing an "altered body image" ; "altered facial image"; "an external body image".

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 7, 11, 12, 18, 34-36, 41-46, 48, 52, 53, 75-77, 82, 85, 86, 96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abitbol et al. (6,692,127) in view of Lindford et al. (6,81,611).

**Claim 1**, Abitbol et al. discloses prompting a subject to capture, using an image capture device (front cameras; two pairs of side cameras), at least one initial body image of the object (the customer's face is then imaged; col. 10, lines 20-32); prompting the subject to self evaluate an actual condition of the subject's own body (the customer is typically instructed regarding self-operation of the imaging system including body positioning; col. 10, lines 20-29; col. 15, lines 29-30); enabling the subject to respond to the prompt (the customer is prompted to select the frame; col. 11, lines 28-31) and enabling the initial body image to be altered based on the subject's response to the prompt (enabling the customer to view the frame from any angle; col. 11, lines 28-37), and Linford et al. teaches enabling the initial body image to be altered based on the subject's response to the at least one prompt to thereby reflect in the altered image the self-evaluation of the subject (col. 9, lines 16-23; lines 46-50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the enabling the initial body image to be altered taught by Lindford into a realistic virtual try-on process of Abitbol for providing altered image from the original image because an improved prioritize feature is described for viewing an image. A user may identify several areas in a modified patient image containing edits that alter the image from the original image, it would improve the overall experience of a patient during a preoperative visit with a physician (col. 4, lines 4-5).

**Claims 2, 43, 86**, Abitbol et al. discloses the image capture device comprises at least one of a digital camera, a scanner, a web cam, a camcorder, and a film camera (col. 10, lines 27-28).

**Claims 3, 44,** Abitbol et al. discloses instructing the subject to use the image capture device (col. 10, lines 23-29).

**Claims 4, 45, 82,** Abitbol et al. discloses the prompt comprises at least one question (the customer is prompted to accept or reject his image; col. 10, lines 32).

**Claims 5, 46,** Abitbol et al. teach prompt is presented graphically in multiple choice (col. 10, lines 16-19).

**Claims 7, 48,** Abitbol et al. discloses the body image includes a facial image (col. 10, lines 29-32), and wherein the prompt prompts the subject to self-evaluate characteristics of the subject's own face (the customer is prompted to accept or reject his image; col. 10, lines 32-33).

**Claims 11, 52,** Abitbol et al. discloses the initial body image is a facial image (the customer's face is imaged; col. 10, lines 29-30), wherein the actual condition comprises at least one of the eyes (the customer's eyes; col. 9, line 65; col. 10, line 4) and nose (facial nosebridge centerpoint; col. 12, line 22), head and face (col. 2, line 62) and wherein the image is altered (selected) to reflect the subject's self-evaluation of the actual condition (col. 11, lines 34-37).

**Claims 12, 53,** Abitbol et al. discloses the initial body image to be displayed on a display device (a realistic 3D view of the customer's face, for viewing on the system monitor screen; col. 9, lines 49-51), control elements to be displayed on the display device (a customer control panel), and enabling activation of the control element to alter (selection step) portion of the image displayed on the display device (enabling the customer to view the frame from any angle; col. 11, lines 31-37).

**Claim 18**, Abitbol et al. teaches the plurality of selectable condition representations are caused to be displayed in at least one of a one-by-one fashion and a simultaneous fashion (col. 17, lines 55-57).

**Claims 34-36, 75-77**, the rationale provided in the rejection of claims 1, 7, 11, 12 is incorporated herein.

**Claims 41, 42, 96**, the rationale provided in the rejection of claims 1 and 7 is incorporated herein.

**Claim 85**, the rationale provided in the rejections of claims 1, 11, 12 are incorporated herein.

6. Claims 37-40, 78-81, 92-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abitbol et al. (6,692,127) in view of Lindford et al. (6,81,611) and further in view of Goldberg 6,526,158).

**Claims 37-40, 78-81, 92-95**, Goldberg discloses the initial body image having fuzzy distortion (col. 24, lines 39-43); the displayed image is altered, based on the subject's response to the prompt, to remove the fuzzy distortion (col. 24; lines 36-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the removing the fuzzy distortion taught by Goldberg into a realistic virtual try-on process of Abitbol for providing altered image from the original image because it would provide the resulting images are smooth without edge effects (col. 24, lines 42-43).

7. Claims 6, 13-17, 21-26, 28-31, 33, 47, 54-59, 62-67, 69-72, 74, 83, 84, 87- 91, 97, 99, 100, 102-104, 107, 109-111 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Abitbol et al. (6,692,127) in view of Lindford et al. (6,081,611) and further in view of Hillebrand et al. (6,571,003).

**Claims 6, 47**, Abitbol et al. teaches prompting the subject to self-evaluate of the body positioning (the customer is instructed regarding self-operation including body positioning; col. 10, lines 20-23), Hillebrand et al. teaches at least one of skin pigmentation, skin texture, skin sheen, skin tone, skin mattiness, skin lines, skin wrinkles, distribution of wrinkles, intensity of wrinkles, intensity of pores, depth of pores, color tone, color homogeneity, spots, freckles, shininess, oiliness, roughness, distribution of hair, thickness of hair, length of hair, density of hair, on the subject's own body (col. 7, line 65 through col. 8, line 10).

**Claims 13, 54**, Hillebrand et al. discloses the actual condition is wrinkles "under eye " sub-image; fig. 7) and wherein movement of the control element in a first direction causes an increase in the appearance of wrinkles on portion of the image displayed on the display device and movement of the control element in a second direction causes a decrease in the appearance of wrinkles (under eye sub-image) on portion of the image displayed on the display device (col. 7, lines 28-40). **Claims 14, 15, 55, 56, 91**, Hillebrand et al. discloses the control element comprises first and second control elements (using the controller 200, moving the slider control 528 to the right and moving the slider control 528 to the left; col. 7, lines 30-37) and the actual condition is wrinkles (suppose "under eye" sub-image is wrinkles), wherein activation of the first control element causes an increase in the appearance of wrinkles on portion of the image displayed on the display device and activation of the second control element causes a

decrease in the appearance of wrinkles on portion of the image displayed on the display device; selectable condition representations to be displayed on the display device, and enabling the subject to select at least one of the condition representations (display analysis results; col. 10, lines 41-51). **Claims 16, 17, 57-59**, Hillebrand et al. discloses prompt is associated with the plurality of selectable condition representations and wherein the subject's response to the prompt comprises selection of at least one of the representations; enabling the initial body image to be altered comprises enabling the initial body image to be altered to include at least one condition representation selected by the subject. **Claims 21, 62**, Hillebrand et al. discloses displaying portion of the initial body image (the first image, and wherein the at least one prompt further prompts the subject to compare a portion of the body image displayed on the display device to the subject's own body (col. 2, lines 3-13). **Claims 22, 63**, Hillebrand et al. discloses the subject to respond to the prompt comprises enabling the subject to indicate whether a portion of the body image displayed on the display device accurately represents the actual condition of the subject's own body, and wherein the image to be altered when the subject believes a portion of the body image displayed on the display device does not accurately represent (each defect area is typically much smaller than the initial image) the actual condition (col. 1, lines 53-67). **Claims 23, 64**, Hillebrand et al. discloses the initial body image is an image of at least a portion of the subject's face (col. 1, lines 53-54). **Claims 24, 65**, Hillebrand et al. discloses the subject to store the altered image (col. 2, lines 28-30). **Claims 25, 26, 66, 67**, Hillebrand et al. discloses the subject to receive information about at least one beauty product for treating the actual



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condition; a recommendation to use the at least one beauty product (col. 1, lines 47-50).

**Claims 28-31, 33, 69-72, 74**, Hillebrand et al. discloses enabling the subject to purchase (to use) beauty product (cosmetic product); the subject to simulate use of beauty product on the altered image; the subject to select the at least one beauty product; product for treating the actual condition (col. 11, lines 50-64). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the skin imaging and analysis systems taught by Hillebrand into the method of altering image of Abitbol for producing selected digital image data, because it would improve areas is created by electronically of defect areas located in the digital image of the face of the person (col. 2, lines 27-30).

**Claims 83 and 84** are rejected upon the same reasons set forth in claim 1, 12, 21, 22, because a method of constructing an image of an external body condition is considered as a method of constructing a body image. In addition, Abitbol teaches evaluation at least one of color and texture (modifying the color and opacity; col. 16, lines 65-67).

**Claims 87-89**, Abitbol does not teach identifying bias element; however, Hillebrand et al. teaches identifying bias element (skin wrinkles, skin smoothness; col. 8, lines 5-8). **Claim 90**, Hillebrand et al. teaches display analysis results (col. 10, line 41 through col. 11, line 44). **Claim 97**, Hillebrand et al. teaches the initial image is present in 2D form (fig. 5). **Claim 99**, Hillebrand et al. teaches transmitting and receiving information via network (col. 4, lines 23-35). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate identifying bias

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element, display analysis results taught by Hillebrand into the method of altering image of Abitbol for producing selected digital image data, because displaying the analysis results (the improved digital image may also be repeatedly alternated to increase human comprehension of the simulated improvement (col. 12, lines 38-40).

**Claims 100, 107**, Abitbol et al. discloses capturing an image of a body region of the subject (col. 10, lines 28-31); displaying the captured image (col. 10, lines 31-32); comparing a color of the displayed image (col. 17, lines 55-60); Abitbol does not teach calibrating the color of the image; however, Hillebrand et al. teaches calibrating the color of the image when the subject perceives a difference between the displayed image and the actual skin color (col. 8, lines 33-67); and simulates use of at least one beauty product on the color calibrated image (col. 11, lines 47-64). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the calibrating of the color of the image taught by Hillebrand into a facial image recognition and modifications of Abitbol's system for producing selected digital image data of the portion of the portion's skin, because it would create improved areas by electronically altering the color of pixels in one of the defect areas located in the first digital image of the face of the person (col. 2, lines 27-30). Further, **Claims 103, 110**, Hillebrand et al. discloses places the body region adjacent to the display device and to visually perceive whether the color of the displayed image and the actual color of the body region differ (color visually distinct from the skin color; col. 8, lines 33-41). **Claims 104, 111**, Hillebrand et al. displaying a plurality of colors (blue, red, green, brown), enabling the subject to select one of the displayed colors closest to the actual color of

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the subject's body region, and enabling alteration of the displayed image to include the selected color (col. 8, line 33 through col. 9, line 4).

**Claims 102, 109**, Abitbol et al. teaches the image capture device is chosen from a digital camera (col. 1, lines 27-31).

8. Claims 8, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abitbol et al. (6,692,127) in view of Lindford et al. (6,081,611), and further in view of Akiba et al. (6,377,745).

**Claims 8, 49**, Abitbol et al. does not teach a time-lapse projection of the altered image; however, Akiba et al. discloses enabling a subject to view a time-lapse projection of the altered image (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the altered image with a lapse-time as taught by Akiba's system into a method of image capture and image modifications of Abitbol for producing product characteristics image, because it is possible to eliminate display of any unnecessary image such as a commercial to consequently realize efficient retrieve of desired video data (col. 4, lines 61-64).

9. Claims 9, 10, 27, 50, 51, 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abitbol et al. (6,692,127) in view of Lindford et al. (6,081,611), Akiba et al. (6,377,745) and further in view of Donovan et al. (US Pub. No. 2003/0014324 A1, filed 7/10/01).

**Claims 9, 10, 27, 50, 51, 68**, Abitbol does not discloses a time lapse; however, Donovan et al. teaches the subject to view a time lapse projection of the altered image based on an assumption of the subject using the at least one beauty product to treat the

actual condition (paragraph 0113, page 13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the time lapse as taught by Donovan's system into the method of image capture and image modifications of Abitbol for alteration the images, because it would provide synthesizing and distributing beauty and personal care products in a retail environment (paragraph 007, page 1).

10. Claims 19, 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abitbol et al. (6,692,127) in view of Lindford et al. (6,081,611), Akiba et al. (6,377,745) and further in view of Filo et al. (6,215,498).

**Claims 19, 60**, Abitbol does not teach displaying the select presentation by slide show and movie presentation; however, Filo et al. discloses selectable condition representations are displayed by means of one of a slide show presentation and a movie presentation (col. 20, lines 51-54). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the slide show and movie presentation as taught by Filo's system into the method of image capture and image modifications of Abitbol for selecting representations of the displayed images, because it would display data and information of interest (col. 20, lines 52-53).

11. Claims 20, 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abitbol et al. (6,692,127) in view of Lindford et al. (6,081,611), and further in view of Wu et al. "Skin Aging Estimation by Facial Simulation", IEEE 1999.

**Claims 20, 61**, Abitbol does not teach varying appearances of wrinkles; however, Wu et al. discloses the actual condition comprises wrinkles which are representation of

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varying appearances of wrinkles (section 1. Introduction, page 210). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the appearance of wrinkles on the face as taught by Wu's method into the facial image of Abitbol for modifying of facial features, because it would develop a dynamical wrinkle simulation system (see section 1.1, page 210).

12. Claims 32, 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abitbol et al. (6,692,127) in view of Lindford et al. (6,081,611), and further in view of Dirksing et al. (6,516,245).

**Claims 32, 73,** Abitbol does not teach makeup product; however, Dirksing et al. teaches beauty product (cosmetic product) comprises at least one makeup product (lipstick, eyeliner, lotion, powder, mascara; col. 4, lines 39-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate makeup product taught by Dirksing's method into the altering image system of Abitbol for producing product characteristics, because it would provide the consumer with more privacy and comfort during overall process (col. 4, lines 14-17).

13. Claims 98, 101, 105, 106, 108, 112 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abitbol et al. (6,692,127) in view of Lindford et al. (6,081,611), and further in view of Hima et al. (EP 1134701 A2).

**Claim 98,** Abitbol et al. does not teach the initial image is present in 3D form; however, Hima et al. teaches displaying a user's face in a 3D fashion (col. 1, lines 32-34); a 3D face model data (col. 3, line 42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a 3D face

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model image taught by Hima's method into the image recognition system of Abitbol for displaying facial image, because it would provide a more realistic beauty simulation (col. 1, lines 33-34).

**Claims 101, 105, 108, 112,** Abitbol does not teach simulating use of the at least one beauty product on predetermined portions of the image. However, Hima et al. teaches this feature (col. 7, line 58 through col. 8, line 12); selecting the beauty product from a plurality of beauty products and causing a simulation of use of the selected beauty product to appear on a region of the color calibrated image (col. 8, line 46 through col. 9, line 28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate simulating use beauty product on predetermined portion of image taught by Hima's method into the altering image system of Abitbol for producing product characteristics, because it would provide a more realistic beauty simulation (col. 1, lines 33-34).

**Claims 106, 113,** Hillebrand et al teaches calibrating the displayed image to simulate at least one of an actual skin tone (col. 10, lines 16-40); Hillebrand does not teach an actual hair color. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a hair color into calibrating the displayed image to simulate an actual hair color, because human hair is a part of an external human body which includes many desired color that is also a part of beauty product.

### ***Response to Arguments***

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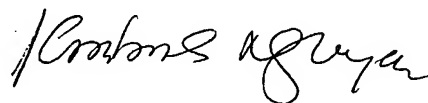
14. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimbinh T. Nguyen whose telephone number is (571) 272-7644. The examiner can normally be reached on Monday to Thursday from 7:00 AM to 4:30 PM. The examiner can also be reached on alternate Friday from 7:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ulka Chauhan can be reached at (571) 272-7782. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 2, 2005



**KIMBINH T. NGUYEN**  
**PRIMARY EXAMINER**